

THE OFFICE OF REGULATORY STAFF

SURREBUTTAL TESTIMONY

OF

JAMES M. McDANIEL

AUGUST 21, 2009



DOCKET NO. 2009-144-C

**Application of TracFone Wireless, Incorporated for Designation as
an Eligible Telecommunications Carrier in the State of South
Carolina for the Limited Purpose of Offering Lifeline and Link Up
Service to Qualified Households**

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FOR

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Eligible Telecommunications Carrier in the State of South Carolina for the Limited
Purpose of Offering Lifeline and Link Up Service to Qualified Households**

**Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND
OCCUPATION.**

A. My name is James M. McDaniel, and my business address is 1401 Main
Street, Suite 900, Columbia, South Carolina 29201. I am employed by the South
Carolina Office of Regulatory Staff ("ORS") as a Program Manager in the
Telecommunications Department.

**Q. ARE YOU THE SAME JAMES M. MCDANIEL WHO FILED DIRECT
TESTIMONY IN THIS CASE?**

A. Yes, I am.

**Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY IN
THIS PROCEEDING?**

1 A. The purpose of my surrebuttal testimony is to respond to issues raised by
2 the witness, Mr. F.J. Pollack, for TracFone Wireless, Inc. (“TracFone”).

3 **Q. WHAT SPECIFIC ISSUES DOES YOUR SURREBUTTAL TESTIMONY**
4 **ADDRESS?**

5 A. My testimony addresses the following issues raised by TracFone:

6 (1) TracFone’s assertion that as a commercial mobile radio service
7 provider (“CMRS”), it is not a provider of radio-based local exchange
8 services, and it is not required to contribute to the State Universal Service
9 Fund (State USF);

10 (2) TracFone’s erroneous rebuttal statement “Importantly, that authority to
11 impose State USF contribution obligations on telecommunications
12 companies is not unlimited; it is not even applicable to all wireless or
13 CMRS companies, as suggested by ORS”¹; and

14 (3) TracFone’s request for unconditional approval of its request for ETC
15 designation.

16 **Q. DOES TRACFONE PROVIDE RADIO-BASED LOCAL EXCHANGE**
17 **SERVICE IN SOUTH CAROLINA?**

¹ TracFone Wireless, Inc., Rebuttal Testimony of F.J. Pollack Exhibit 1, Docket No. 2009-144-C, submitted July 30, 2009, at p.6 line 8.

1 wholesale services such as toll switched access, dedicated access,
2 unbundled network elements, resale, etc.²

3 Clearly, the Commission has determined a wireless carrier should contribute where
4 the services provided by it compete with local telecommunications services.

5 **Q. DID THE ORS SUGGEST THAT ALL WIRELESS CARRIERS ARE**
6 **REQUIRED TO CONTRIBUTE TO THE STATE UNIVERSAL SERVICE**
7 **FUND?**

8 A. No. In my direct testimony, I specifically stated the Commission findings in
9 Order No. 2001-419 which establishes a threshold criterion as to when a wireless
10 carrier is required to contribute to state USF.

11 **Q. IF TRACFONE IS GRANTED ETC DESIGNATION BY THE**
12 **COMMISSION, WILL TRACFONE BE REQUIRED TO COMPLY WITH**
13 **ALL STATE LAWS AND REGULATIONS RELATED TO DESIGNATED**
14 **ETCS?**

15 A. Yes, TracFone will be required to comply with all of the Commission's
16 decisions and regulations and any statutory requirements applicable to ETCs.
17 TracFone will be required to contribute to the State Universal Service Fund, file
18 annual reports, file gross receipts reports, pay gross receipts assessments, file
19 Universal Service Fund Contribution Reports, and submit other reports which

² Order No. 2001-996 approving USF Guidelines – Guidelines Pg. 3 Section 5 - Contributions to the USF – Third Bullet.

1 may be required or by State Law. Any carrier seeking ETC designation must be
2 willing to comply with all South Carolina regulatory requirements.

3 **Q. HAS ORS CHANGED ITS POSITION RELATED TO APPROVAL OF**
4 **TRACFONE'S ETC DESIGNATION REQUEST SINCE FILING ITS**
5 **DIRECT TESTIMONY?**

6 A. Yes. Based on the rebuttal testimony of Mr. Pollak, the ORS does not
7 recommend the Commission approve TracFone's ETC designation request.

8 The Commission has established regulations which govern the process of
9 ETC designation. 26 S.C. Code of Regulations 103-690.A.3. states
10 "Notwithstanding the ETC applicant's regulatory status or the commission's
11 jurisdiction over the applicant's regular operations, in seeking designation as an
12 ETC, the applicant acknowledges the commission's authority and jurisdiction to
13 impose such regulations on ETCs, including the applicant, as are in the public
14 interest." In consideration of this regulation and the nature of the rebuttal
15 testimony submitted by Mr. Pollak on behalf of TracFone, it appears that
16 TracFone is unwilling to comply with Commission regulations and South
17 Carolina's statutory requirements.

18 **Q. DOES THIS COMPLETE YOUR SURREBUTTAL TESTIMONY?**

19 A. Yes.

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2009-144-C

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in the State of South Carolina for the Limited Purpose)
of Offering Lifeline and Link Up Service to Qualified)
Households)

**CERTIFICATE OF
SERVICE**

This is to certify that I, Pamela J. McMullan, have this date served one (1) copy of the **Surrebuttal Testimony of James M. McDaniel** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

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Pamela J. McMullan

August 21, 2009
Columbia, South Carolina